

REMARKS

Claims 1-24 are pending in this application. No claims are added and no claims are cancelled. Thus, after entry of this amendment, **claims 1-24 will still be pending**. Claims 1 and 14 are amended herein to specify that the wine comprises at least about 0.5% alcohol by volume. Support for this amendment can be found, for example, at paragraph [0028] of the published application. Claims 2, 5, 7, 9, 16, 17, 21, 22 and 23 are amended to correct minor typographical errors. No new matter has been introduced by these amendments.

REJECTIONS UNDER 35 U.S.C. §103

Claims 1-5, 13 and 20-24 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Shanbrom (U.S. Publication No. 2002/0102287), in view of Shatila (U.S. Patent No. 3,975,551) and Kooistra (U.S. Patent No. 3,725,547).

Claims 6 and 7 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Shanbrom, as applied to claim 1, in view of Poulos *et al.* (U.S. Patent No. 6,132,786).

Claims 8-12 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Shanbrom, as applied to claim 1, in view of Fleet *et al.* (U.S. Patent No. 5,104,665).

Claims 14-16, 18 and 19 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Shanbrom, in view of Kooistra, Shatila and Fleet *et al.*

Claim 17 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Shanbrom, in view of Kooistra, Shatila, Poulos *et al.* and Fleet *et al.*

Summary of the cited references

The Office alleges that Shanbrom teaches an antimicrobial lees, comprising wine or waste wine and salt, that completely prevents bacterial growth. Shatila is described as teaching an antimicrobial sulfur dioxide in food preservation at a concentration of at least 200 ppm. The Office further alleges Kooistra teaches a synergistic antibacterial combination that contains 0-90% salt. Poulos *et al.* is alleged to teach long-term mold inhibition in food products comprising tartaric acid at a concentration of 0.01-3%. Finally, the Office alleges that Fleet *et al.* teach fermentation of wine, wherein the concentration of acetic acid is 0.60 g/L, the pH is about 3.18 and the alcohol content is 11.5-12.4% by volume.

The Office alleges it would have been obvious to combine the antimicrobial lees of Shanbrom with the sulfur dioxide of Shatila (claims 1, 2, 4, 5 and 13); the salt concentrations of Kooistra (claim 3); the tartaric acid concentrations taught by Poulos *et al.* (claims 6 and 7); and the concentration of acetic acid, pH and alcohol content taught by Fleet *et al.* (claims 8-12). Claims 14-19 are rejected in view of the combination of Shanbrom, Kooistra, Shatila, Poulos *et al.* and Fleet *et al.* for the reasons stated above. In regard to claims 20-23, the Office further alleges that Shanbrom discloses a waste wine composition capable of complete elimination of bacterial growth over a short period of time. In regard to claim 24, the Office alleges that Shanbrom, Kooistra and Shatila teach all of the claimed reagents and antibacterial efficacy of the claimed composition, thus the claimed effects would implicitly be achieved by the claimed composition.

The Office has failed to establish a *prima facie* case of obviousness

In order to establish a *prima facie* case of obviousness, the Office must demonstrate that the combination of cited references teaches each and every limitation of the pending claims. Applicants submit the Office has failed to meet its burden.

Each of the above-listed rejections under 35 U.S.C. §103(a) relies upon the Shanbrom reference as teaching an antimicrobial lees. The Office interprets the antimicrobial lees as comprising wine or waste wine. However, contrary to the Office's assertion, "lees" is not wine or waste wine, but rather it is a **solid sediment** resulting from the fermentation process of wine. As taught by Shanbrom, the lees of wine "consist of tannins and plant pigments precipitated around crystals of potassium tartarate" (see abstract and paragraph [0009] of the published Shanbrom application). Use of "consist of" to describe the composition of lees indicates that the lees comprise nothing other than tannins, plant pigments and potassium tartarate crystals. Shanbrom also teaches that the tannins and plant pigments, which polymerize and fall out of solution, are *removed from the wine* by filtration or decanting before use (see paragraph [0014]). Shanbrom further teaches (in paragraph [0016]) that "Lees are obtained from the winery as a suspension of solid material *in* a quantity of wine" (emphasis added). Shanbrom continues by stating that "The first step of my process is to *separate the liquid wine from the solid lees*" (emphasis added). Thus, Shanbrom clearly teaches that lees are a solid material, which is separate from the liquid wine.

All of the pending claims are directed to disinfectant compositions comprising wine, which can include waste wine, surplus wine, pomace wine, cluster thinning wine, or combinations thereof, or methods of their use. The instant specification defines wine as a product produced from the fermentation of grapes, other fruit, or other suitable agriculture products comprising at least about 0.5% alcohol by volume (see paragraph [0028] of the published application). In contrast to wine, the antimicrobial lees taught by Shanbrom does not comprise alcohol. Thus, Shanbrom does not teach or suggest an antimicrobial composition comprising wine. Kooistra, Shatila, Poulos *et al.* and Fleet *et al.*, alone or in combination, do not teach or suggest that wine has disinfectant properties, and thus do not cure the deficiencies of Shanbrom. Therefore, the combination of cited references does not teach each and every element of the pending claims. However, in an effort to further clarify the pending claims, claims 1 and 14 are amended herein to recite that the wine comprises at least about 0.5% alcohol by volume.

Summary

Applicants submit the cited references do not teach each and every element of the pending claims. Accordingly, the Office has failed to establish a *prima facie* case of obviousness. Applicants request withdrawal of each rejection under 35 U.S.C. §103(a).

CONCLUDING STATEMENT

Applicants believe that the foregoing comprises a full and complete response to the Office action of record. Withdrawal of the pending rejections and reconsideration of the claims is respectfully requested. If the Examiner believes that there are any remaining issues in the case that could be resolved by a telephonic interview, the Examiner is encouraged to contact the representative for Applicants listed below to discuss any outstanding matters.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By /Jodi L. Connolly/
Jodi L. Connolly, Ph.D.
Registration No. 54,044